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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Intellectual Property Administration
P. O. Box 272400
Fort Collins, CO 80527-2400

EXAMINER

FISCHER, ANDREW J

ART UNIT PAPER NUMBER

3627

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/045,418

Applicant(s)

JIMMY NG ET AL.

Examiner

Andrew J. Fischer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-11 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Acknowledgements

1. Applicants' amendment filed November 7, 2005 is acknowledged. Accordingly, claims 1-11 remain pending.
2. All references in this Office Action to the capitalized versions of "Applicants" refers specifically the Applicants of record. References to lower case versions of "applicant" or "applicants" refers to any or all patent "applicants." Unless expressly noted otherwise, references to "Examiner" in this Office Action refers to the Examiner of record while reference to or use of the lower case version of "examiner" or "examiners" refers to examiner(s) generally.
3. This Office Action, the "First Non Final Office Action" is given Paper No. 20060124.
4. This Office Action is written in OACS. Because of this, the Examiner is unable to control formatting, paragraph numbering, font, spelling, line spacing, and/or other word processing issues. The Examiner sincerely apologies for these errors.

Claim Rejections - 35 USC §103

5. The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-11 are alternatively rejected under 35 U.S.C. §103(a) as being unpatentable over Gifford (U.S. 6,049,785) in view of The Bank Credit Card Business by the American Bankers Association (hereinafter "BCCB"). Gifford discloses the claimed invention including

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using a ordinary credit process to process to make a purchase; and providing confirmation via a password, email and other means. Gifford does not directly disclose how a ordinary credit card operation works.

Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Gifford as taught by BCCB to include a discussion of an ordinary credit card transaction. Such a modification would have directly disclosed that which is inherent.

7. The Examiner notes validation of any ordinary credit card is old and well known in the art. In this process, the following typically occurs: a merchant receives transaction related information including an account identifier (the customer hands the merchant the credit card); contacting a communications device associated with the account (the remote verification computer system is a 'communications device associated with the account'); the remote verification computer system (by accessing a database) then performs the accessing and verifying information associated with the account; once the credit card is verified, the same remote verification computer system generates an approval signal (*e.g.* 'Transaction OK') and sends this signal to the merchant, this remote verification computer system also creates a transaction authorization code to be provided to the merchant; the merchant then authorizes the commercial transaction upon receiving the approval signal and transaction confirmation (the transaction authorization code). As noted in the previous office action, it is the Examiner's factual determination that this credit card validation and subsequent confirmation are old and well known in the art. See again Suzuki (U.S. 6,612,488 B2) C1, L25 to C3 L15; and BCCB.

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8. Claims 1-3 and 6, as understood by the Examiner, are alternatively rejected under 35 U.S.C. §103(a) as being unpatentable over Watanabe (U.S. 6,098,055). Watanabe discloses at C6, L29+. While Watanabe discloses authorizing, Watanabe does directly disclose the authorizing as exactly as claimed.

However if not inherent, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Watanabe to include authorizing as precisely as claimed. Such a modification would have helped prevent unauthorized use of a credit card.

9. For due process purposes and because Applicants have not objectively indicated and redefined claim limitation(s) to have meanings other than their ordinary and accustomed meanings, the Examiner confirms that Applicants have decided not to be their own lexicographer. To support this position, the Examiner again notes the following factual findings as first discussed in the previous Office Actions.¹ First, the Examiner has again carefully reviewed the specification and prosecution history and can not locate any lexicographic definition(s). Second, the Examiner finds that not only have Applicants not pointed to definitional statements in their specification or prosecution history, Applicants have also not pointed to a term or terms in a claim with which to draw in those statements² with the required

¹ See the First Non Final Office Action mailed January 26, 2005, Paragraph No. 17; and the Second Non Final Office Action mailed August 8, 2005, Paper No. 20050720, Paragraph No. 11 beginning on page 5.

² "In order to overcome this heavy presumption in favor of the ordinary meaning of claim language, it is clear that a party wishing to use statements in the written description to confine or otherwise affect a patent's scope must, *at the very least*, point to a term or terms in the claim with which to draw in those statements. [Emphasis added.]" *Johnson Worldwide Assocs. v. Zebco Corp.*, 175 F.3d 985, 989, 50 USPQ2d 1607, 1610 (Fed. Cir. 1999).

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clarity, deliberateness, and precision.³ Third, after receiving express notice of the Examiner's position that lexicography is *not* invoked,⁴ Applicants' responses have not point out the "supposed errors" in the Examiner's position regarding lexicography invocation in accordance with 37 C.F.R. §1.111(b) (i.e. Applicants did not argue lexicography *was* invoked). Forth and to be sure of Applicants' intent, the Examiner also notes that Applicants have declined the Examiner's express invitation⁵ to be their own lexicographer. Finally, after receiving express notice of the preceding factual findings and conclusions, Applicants' latest response again fails to point out the supposed errors in the Examiner's position regarding lexicography invocation in accordance with 37 C.F.R. §1.111(b). Moreover, Applicants' latest response—while fully considered by the Examiner—does not change the Examiner's reasonable conclusion that Applicants have decided not to be their own lexicographer. Therefore (and unless expressly noted otherwise by the Examiner), the heavy presumption in favor of the ordinary and accustomed meaning for claim terminology is confirmed. Accordingly, the claims continue to be interpreted with their "broadest reasonable interpretation," *In re Morris*, 127 F.3d 1048, 1054, 44

³ "The patentee's lexicography must, of course, appear 'with reasonable clarity, deliberateness, and precision' before it can affect the claim." *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1249, 48 USPQ2d 1117, 1121 (Fed. Cir. 1998) citing *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994).

⁴ See Note 1.

⁵ See *e.g. Fuji Photo Film Co. v. ITC*, 386 F.3d 1095, 72 USPQ2d 1769, 1773 (Fed. Cir. 2004) (noting that applicants' failure to correct the examiner's characterization of an element of claim interpretation is nevertheless an indication of how a claim should be interpreted since applicant declined the examiner's express invitation to correct a possible error in claim interpretation: "applicant's attention was called to the examiner's interpretation of [how the element was interpreted by the examiner, and] applicant was invited to correct the examiner's interpretation—an invitation the applicant did not accept."

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USPQ2d 1023, 1027 (Fed. Cir. 1997), and the Examiner continues to rely heavily and extensively on this interpretation.⁶

10. Under the broadest reasonable interpretation standard noted above and unless expressly modified in this Office Action, the Examiner maintains his interpretations including the statements and/or definitions of claim limitations as noted in previous Office Action. Those previous definitions are part of the administrative record and, in accordance with *In re Morris*, are provided simply as a factual source to support the Examiner's claim interpretations (and ultimately the Board of Patent Appeals and Interferences claim interpretations if necessary⁷) during ex parte examination.

11. Also as noted in the previous office action, it is the Examiner's factual determination that it is old and well known in the art that at least one of the ways a merchant can confirm that the order was paid for and delivered is by receiving the customer's signature after the validation process. See e.g. Martinez (U.S. 5,334,824) C2, L5-L55; Suzuki C2, L1-L6.

12. The Examiner confirms that Applicants have elected not to recite any product-by-process claims. See the First Non Final Office Action mailed January 26, 2005, Paper No. 01242005, Paragraph No. 19 beginning on page 9.

⁶ See 37 C.F.R. §1.104(c)(3) which states in part: "the examiner may rely upon admissions by applicant . . . as to *any matter* affecting patentability [Emphasis added.]"

⁷ See *Gechter v. Davidson*, 116 F.3d 1454, 1460, 43 USPQ2d 1030, 1035 (Fed. Cir. 1997) ("[W]e hold that the Board is required to set forth in its opinions specific findings of fact and conclusions of law adequate to form a basis for our review.").

Response to Arguments

13. Applicants' arguments filed November 7, 2005 have been fully considered but they are not persuasive.

14. Applicants arguments with respect to Niwa (U.S. 6,853,977 B1) have been considered. Because the Examiner inadvertently used 35 U.S.C. §102(b) instead of 35 U.S.C. §102(e), the Examiner agrees that the rejection should be based upon 35 U.S.C. §102(e). However if the Examiner changed the rejection, the Examiner would be unable to make this office action final. In order to make this application final, the Examiner hereby withdraws the prior art rejections based upon Niwa. Applicants arguments regarding Niwa are therefore moot.

15. Regarding Applicants' arguments regarding the obviousness rejections, they have been considered but are not persuasive..

16. Regarding Applicants' comments on page 9 of their response regarding the Examiner's paragraphs 11-14 and 18-20 (from the Second Non Final Office Action), the Examiner respectfully disagrees because it is the Examiner's position that the paragraphs are—or more precisely—*were* highly relevant.

It is obviously Applicants' right to believe that such issues were not relevant. However, should Applicants later realize that these issues were relevant and that they should have pointed out the supposed errors in the Examiner's positions, these issues will not be discussed. In particular, because the Examiner continues to rely on his positions on these matters, the Examiner will for factual determinations invoke the doctrine of quasi-estoppel. Conclusions of law related to these issues are henceforth considered waived.

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17. Unless expressly noted otherwise in this paragraph or elsewhere in this Office Action, the Examiner maintains his findings of fact and conclusions of law as noted in the previous office action(s). Additionally, all objection(s) and/or rejection(s) from any previous office action that are not maintained in this Office Action are either overcome by Applicants and/or are hereby withdrawn.

Conclusion

18. **THIS ACTION IS MADE FINAL.** Applicants are reminded of the extension of time policy as set forth in 37 C.F.R. §1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 C.F.R. §1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

19. References considered pertinent to Applicants' disclosure are listed on form PTO-892. All references listed on form PTO-892 are cited in their entirety.

20. Unless expressly noted otherwise by the Examiner or other USPTO official, the following four (4) citations to the Manual of Patent Examining Procedure ("MPEP") apply to this Office Action *and* any future office action(s), communication(s), or other correspondence

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provided by the USPTO: MPEP citations to Chapter 2300 are from the MPEP 8th Edition, Rev. 4, October 2005; citations to Chapters 200-900, 1200-1400, and 1700-1900, 2100, 2200, 2600 are from the MPEP 8th Edition, Rev. 3, August 2005. MPEP citations to Chapters 100, 1000, 1100, 1500, 2000, 2500, and 2700 are from the MPEP 8th Edition, Rev. 2, May 2004. MPEP citations to Chapters 1600, 2300, 2400 are from MPEP 8th Edition, August 2001.

21. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

22. As noted in the Second Non Final Office Action, Applicants are again reminded that patents are written by and for skilled artisans. See *e.g. Vivid Technologies, Inc. v. American Science and Engineering, Inc.*, 200 F.3d 795, 804, 53 USPQ2d 1289, 1295 (Fed. Cir. 1999) (“patents are written by and for skilled artisans”). The Examiner therefore starts with the presumption that Applicants are skilled artisans who possess at least ordinary skill in the art. Consequently, it is the Examiner’s position that because the patent references of record are directed to those with ordinary skill in this art, these references are clear, explicit, and specific as to what they teach. Nevertheless some applicants apparently have difficulty understanding the references. In an effort to maintain compact prosecution, provide due process, and to help these applicants understand the contents of a reference when viewed from the position of one of ordinary skill in this art, Applicants are hereby given actual notice that if after reasonably reading

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any reference of record—whether the reference is currently of record or subsequently made of record—if Applicants can not reasonably understand or if Applicants have difficulty comprehending one or more sentence(s), statement(s), diagram(s), or principle(s) set forth in the reference(s), Applicants should (in their next appropriately filed response) bring this issue to the attention of the Examiner. In addition to bringing this issue to the attention of the Examiner, and in accordance with 37 C.F.R. §1.111(b), Applicants' response must also state *why* they either do not understand or *why* they have difficulty comprehending the offending reference(s). If after properly receiving (*i.e.* Applicant's response is made of record) both Applicant's request for understanding and the reasons as to *why* the request is made—and assuming the reference is germane to at least one outstanding rejection—the Examiner may either provide a substitute reference, or alternatively, do his best to elucidate the particular sentence(s), statement(s), diagram(s), or principles(s) in the offending reference. For all documents or references made of record after this Office Action, Applicant is given actual notice that this paragraph becomes effective when Applicant receives notice that the document or reference is made of record (*i.e.* this paragraph becomes applicable when Applicant submits an Information Disclosure Statement or when Applicant receives an examiner's Notice of References Cited (Form PTO-892)).

23. Additionally, Applicants are reminded that it is inappropriate for the USPTO to disregard any relevant evidence. "It is jurisprudentially inappropriate to disregard any relevant evidence on any issue in any case, patent cases included." *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871, 879 (Fed. Cir. 1983). Second, when making substantive patentability determinations, it is clear error for the USPTO not to consider *all* evidence of record. See *e.g. In re Piasecki*, 745 F.2d 1468, 1471, 223 USPQ 785, 787 (Fed. Cir. 1984) ("All the evidence on the

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question of obviousness must be considered.”); *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992) (“After evidence or argument is submitted by the applicant in response, patentability is determined on *the totality of the record*, by a preponderance of evidence with due consideration to persuasiveness of argument. [Emphasis added.]”); *In re Glaug*, 283 F.3d 1335, 1338, 62 USPQ2d 1151, 1152-53 (Fed. Cir. 2002)(“Patentability vel non is then determined on the *entirety* of the record, by a preponderance of evidence and weight of argument. . . . ; patentability is determined by a preponderance of *all* the evidence. [Emphasis added.]”); and *In re Rinehart*, 531 F.2d 1048, 189 USPQ 143, 146 (CCPA 1976)(where the court expressly set forth the issue as “Whether, in light of *all the evidence*, the claimed method would have been obvious at the time the invention was made. [Emphasis added.]”). Third, any factual determination by the USPTO that does not consider *all* relevant evidence may not be supported by substantial evidence⁸ since the particular evidence *not* considered may be probative of a factual issue presented. Forth, it is well established that “[a] reference anticipates a claim if it discloses the claimed invention ‘such that a skilled artisan could take its teachings in *combination with his own knowledge of the particular art and be in possession of the invention*. [Emphasis in original.]’” *In re Graves*, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995) citing *In re LeGrice*, 301 F.2d 929, 936, 133 USPQ 365, 372 (CCPA 1962) and noting that regarding the claimed “simultaneously monitoring the selected multiple connection points,” the prior art “nevertheless anticipates [the claimed invention], even if it does not specifically disclose simultaneous monitoring of the output points, if simultaneous or parallel monitoring is

⁸ Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938).

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within the knowledge of a skilled artisan.” *Graves*, 69 F.3d at 1152, 36 USPQ2d at 1701.⁹

Therefore because, inter alia, it is inappropriate for the USPTO to disregard any relevant evidence, because the USPTO must consider all evidence of record, because any evidence *not* considered by the USPTO may be probative of at least one factual issue presented, and because anticipation is determined by the teachings of a reference in combination with the knowledge of one of ordinary skill in the art, Applicants are hereby given actual notice that all prior art rejections (*i.e.* rejection(s) based upon 35 U.S.C. §§ 102 or 103)—if found in this Office Action or any subsequent office action—are based upon the cited reference(s) in the statement of the rejection in combination with the knowledge of one of ordinary skill in this art.

24. Because this application is now final, Applicants also are reminded of the USPTO’s after final practice as discussed in MPEP §714.12 and §714.13 and that entry of amendments after final is *not* a matter of right. “The refusal of an examiner to enter an amendment after final rejection of claims is a matter of discretion.” *In re Berger*, 279 F.3d 975, 984, 61 USPQ2d 1523, 1529 (Fed. Cir. 2002) (citations omitted). Furthermore, suggestions or examples of claim language provided by the Examiner are just that—suggestions or examples—and do not constitute a formal requirement mandated by the Examiner. Unless stated otherwise by an express indication that a claim is “allowed,” exemplary claim language provided by the Examiner to overcome a particular rejection or to change claim interpretation has *not been addressed* with respect to other aspects of patentability (*e.g.* §101 patentable subject matter, §112 1st paragraph written description and enablement, §112 2nd paragraph indefiniteness, and §102

⁹ See also *In re Donohue*, 766 F.2d 531, 533, 226 USPQ 619, 621 (Fed. Cir. 1985) for the same statement of law and also citing *In re LeGrice*.

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and §103 prior art). Therefore, any claim amendment submitted under 37 C.F.R. §1.116 that incorporates an Examiner suggestion or example or simply changes claim interpretation will nevertheless require further consideration and/or search and a patentability determination as noted above.

25. Also in accordance with *In re Lee*, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002), the Examiner finds that the Borland's Paradox for Windows User's Guide is additional evidence of what is basic knowledge or common sense to one of ordinary skill in this art. The reference is cited in its entirety. Paradox for Windows User's Guide exemplifies a typical relational database system that is typically used to access data. Paradox for Windows User's Guide also discloses basic features such as password protection of data, querying the data, and other database features. Because of the reference's basic content (which is self-evident upon examination of the reference) and after further review of the entire record including the prior art now of record in conjunction with the factors as discussed in MPEP §2141.03 (where practical), the Examiner finds that the Paradox for Windows User's Guide is primarily directed towards those of low skill in this art. Because the reference is directed towards those of low skill in this art, the Examiner finds that one of ordinary skill in this art must—at the very least—be aware of and understand the knowledge and information contained within the reference.

26. In accordance with the USPTO's goals of customer service, compact prosecution, and reduction of cycle time, the Examiner has made every effort to clarify his position regarding claim interpretation and any rejections or objections in this application. Furthermore, the Examiner has again provided Applicants with notice—for due process purposes—of his position regarding his factual determinations and legal conclusions. The Examiner notes and thanks

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Applicants for their "Remarks" (beginning on page 5) traversing the Examiner's positions on various points. As noted in the previous office actions, if Applicants disagree with any additional factual determination or legal conclusion made by the Examiner in this Office Action whether expressly stated or implied,¹⁰ the Examiner again respectfully reminds Applicants to properly traverse the Examiner's position(s) in accordance with 37 C.F.R. §1.111(b) in their next properly filed response. By addressing these issues now, matters where the Examiner and Applicants agree can be eliminated allowing the Examiner and Applicants to focus on areas of disagreement (if any) with the goal towards allowance in the shortest possible time. If Applicants have any questions regarding the Examiner's positions or have other questions regarding this communication or even previous communications, Applicants are strongly encouraged to contact Examiner Andrew J. Fischer whose telephone number is (571) 272-6779. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's immediate supervisor, Alexander Kalinowski, can be reached at (571) 272-6771. The fax number for facsimile responses is now (571) 273-8300.



Andrew J. Fischer
Primary Examiner
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AJF
January 24, 2006

¹⁰ E.g., if the Examiner rejected a claim under §103 with two references, although not directly stated, it is the Examiner's implied position that the references are analogous art.